

## § 603.900

data statute, which provides for the protection from public disclosure, for a period of up to 5 years after the date on which the information is developed, any information developed pursuant to this transaction that would be trade secret, or commercial or financial information that is privileged or confidential, if the information had been obtained from a non-Federal party.

### § 603.900 Receipt of final performance report.

The TIA should make receipt of the final report a condition for final payment. If the payments are based on payable milestones, the submission and acceptance of the final report by the Government representative will be incorporated as an event that is a prerequisite for one of the payable milestones.

#### RECORDS RETENTION AND ACCESS REQUIREMENTS

### § 603.905 Record retention requirements.

A TIA must require participants to keep records related to the TIA (for which the agreement provides Government access under § 603.910) for a period of three years after submission of the final financial status report for an expenditure-based TIA or final program performance report for a fixed-support TIA, with the following exceptions:

(a) The participant must keep records longer than three years after submission of the final financial status report if the records relate to an audit, claim, or dispute that begins but does not reach its conclusion within the 3-year period. In that case, the participant must keep the records until the matter is resolved and final action taken.

(b) Records for any real property or equipment acquired with project funds under the TIA must be kept for three years after final disposition.

### § 603.910 Access to a for-profit participant's records.

(a) If a for-profit participant currently grants access to its records to the DCAA or other Federal Government auditors, the TIA must include for that participant the standard ac-

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cess-to-records requirements at 10 CFR 600.342(e). If the agreement is a fixed-support TIA, the language in 10 CFR 600.342(e) may be modified to provide access to records concerning the recipient's technical performance, without requiring access to the recipient's financial or other records. Note that any need to address access to technical records in this way is in addition to, not in lieu of, the need to address rights in data (see § 603.845).

(b) For other for-profit participants that do not currently give the Federal Government direct access to their records and are not willing to grant full access to records pertinent to the award, the contracting officer may negotiate limited access to the recipient's financial records. For example, if the audit provision of an expenditure-based TIA gives an IPA access to the recipient's financial records for audit purposes, the Federal Government must have access to the IPA's reports and working papers and the contracting officer need not include a provision requiring direct Government access to the recipient's financial records. For both fixed-support and expenditure-based TIAs, the TIA must include the access-to-records requirements at 10 CFR 600.342(e) for records relating to technical performance.

### § 603.915 Access to a nonprofit participant's records.

A TIA must include for any nonprofit participant the standard access-to-records requirement at:

(a) 10 CFR 600.242(e), for a participant that is a State or local governmental organization;

(b) 10 CFR 600.153(e), for a participant that is a nonprofit organization. The same requirement applies to any GOCO or FFRDC, even though nonprofit GOCOs and FFRDCs are exempted from the definition of "recipient" in 10 CFR 600.101.

#### TERMINATION AND ENFORCEMENT

### § 603.920 Termination and enforcement requirements.

(a) *Termination.* A TIA must include the following conditions for termination:

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(1) An award may be terminated in whole or in part by the contracting officer, if a recipient materially fails to comply with the terms and conditions of the award.

(2) Subject to a reasonable determination by either party that the project will not produce beneficial results commensurate with the expenditure of resources, that party may terminate in whole or in part the agreement by providing at least 30 days advance written notice to the other party, provided such notice is preceded by consultation between the parties. The two parties will negotiate the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. If either party determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purpose for which the award was made, the award may be terminated in its entirety.

(3) Unless otherwise negotiated, for terminations of an expenditure based TIA, DOE's maximum liability is the lesser of:

(i) DOE's share of allowable costs incurred up to the date of termination, or

(ii) The amount of DOE funds obligated to the TIA.

(4) Unless otherwise negotiated, for terminations of a fixed-support based TIA, DOE shall pay the recipient a proportionate share of DOE's financial commitment to the project based on the percent of project completion as of the date of termination.

(5) Notwithstanding paragraphs (3) and (4) of this section, if the award includes milestone payments, the Government has no obligation to pay the recipient beyond the last completed and paid milestone if the recipient decides to terminate.

(b) Enforcement. The standards of 10 CFR 600.352 (for enforcement) and the procedures in 10 CFR 600.22 (for disputes and appeals) apply.

### Subpart H—Executing the Award

#### § 603.1000 Contracting officer's responsibilities at time of award.

At the time of the award, the contracting officer must:

(a) Ensure that the award document contains the appropriate terms and conditions and is signed by the appropriate parties, in accordance with §§ 603.1005 through 603.1015.

(b) Document the analysis of the agreement in the award file, as discussed in § 603.1020.

(c) Provide information about the award to the office responsible for reporting on TIAs.

#### THE AWARD DOCUMENT

#### § 603.1005 General responsibilities.

The contracting officer is responsible for ensuring that the award document is complete and accurate. The document should:

(a) Address all issues;

(b) State requirements directly. It is not helpful to readers to incorporate statutes or rules by reference, without sufficient explanation of the requirements. The contracting officer generally should not incorporate clauses from the Federal Acquisition Regulation (48 CFR parts 1–53) or Department of Energy Acquisition Regulation (48 CFR parts 901–970) because those provisions are designed for procurement contracts that are used to acquire goods and services, rather than for a TIA or other assistance instruments.

(c) Be written in clear and concise language, to minimize potential ambiguity.

#### § 603.1010 Substantive issues.

Each TIA is designed and negotiated individually to meet the specific requirements of the particular project, so the list of substantive issues that will be addressed in the award document may vary. Every award document must address:

(a) *Project scope.* The scope is an overall vision statement for the project, including a discussion of the project's purpose, objectives, and detailed commercial goals. It is a critical provision because it provides a context for resolving issues that may arise during post-award administration. In a fixed-support TIA, the well-defined outcomes that reliably indicate the amount of effort expended and serve as the basis for the level of the fixed support must be